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GERARDO HERNANDEZ

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

GERARDO HERNANDEZ

Plaintiff,

V.

13 WING SING CHONG CO, INC., and
14 INTELLIZ, INC.

15 || Defendants.

CASE NO.

Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

1. **Violation of the Americans with Disabilities Act Title III [42 U.S.C. § 12182(a), *et seq.*]**
 2. **Denial of Full and Equal Access [Cal. Civil Code §§ 54 And 54.1]**
 3. **Violation of the Unruh Act [Cal. Civil Code § 51]**

DEMAND FOR JURY TRIAL

INTRODUCTION

22 1. Defendants, the owners and operators of the Edible Arrangements store in Palo
23 Alto, California, are discriminating against Plaintiff Gerardo Hernandez and other persons with
24 disabilities. Defendants failed to construct and maintain safe and accessible parking and paths of
25 travel for their store as required by federal and State law, and failed to remove barriers to access
26 so that Plaintiff and other persons with disabilities could have equal access to their goods and
27 services. Plaintiff brings this lawsuit to enforce his rights under the Americans with Disabilities
28 Act and supplementary State laws. He seeks an order requiring Defendants to make the store,

1 associated paths of travel and parking accessible to him and other similarly situated. Plaintiff
2 also seeks damages, attorneys' fees, costs and litigation expenses.

3

4 JURISDICTION

5 2. This Court has original jurisdiction of this action under the Americans with
6 Disabilities Act of 1990, 42 U.S.C. §§12101 *et seq.* (the "ADA").

7 3. The Judicial District of the United States District Court for the Northern District
8 of California has supplemental jurisdiction over the State law claims alleged in this Complaint
9 pursuant to 28 U.S.C. §1337(a). All the claims derive from a common nucleus of operative facts
10 and arose out of the same transactions. The State law claims are so related to the federal action
11 that they form part of the same case or controversy and the actions would ordinarily be expected
12 to be tried in one judicial proceeding.

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VENUE

15 4. Venue in the Judicial District of the United States District Court for the Northern
16 District of California is in accordance with 28 U.S.C. §1331(b) because Plaintiff's claims arose
17 within this Judicial District and the property that is the subject of this action is located in this
18 District in the City of Palo Alto and County of San Mateo, California.

19

20

THE PARTIES

21 5. At all times herein relevant, Plaintiff was a person with a disability as defined in
22 42 U.S.C. § 12102 and California Government Code § 12926(l). He is affected by paralysis that
23 requires him to use a wheelchair for mobility. His condition affects the following body systems:
24 Neurological, musculoskeletal, and/or cardiovascular. Plaintiff's condition substantially limits
25 major life activities, including standing and walking. Plaintiff cannot perform these activities in
26 the same manner, speed and duration as the average person. Moreover, Plaintiff has a history of
27 and/or has been diagnosed and/or classified as having a physical impairment. The State of
28 California has issued him a permanent disabled parking placard.

1 6. Defendant Wing Sing Chong Company, Inc. (“Wing Sing Chong”), a California
2 corporation, and Defendant Intelliz, Inc. (“Intelliz”), a California corporation, are and at all times
3 relevant to the Complaint were, businesses or corporations organized and existing and/or doing
4 business under the laws of the State of California. Based upon a review of public records,
5 Plaintiff is informed and believes and based thereon alleges, that Wing Sing Chong owns the
6 entire strip of stores from 2706 to 2740 Middlefield Road, Palo Alto, and that Intelliz is its
7 tenant, and owns and operates the Edible Arrangements store located at 2740 Middlefield Road
8 in Palo Alto, California (“The Store”). The named Defendants will be referred to collectively as
9 “Defendants.”

10 7. Defendants, and each of them, are the owners, operators, lessees and/or lessors of
11 the Store as a public accommodation, open to the public under the laws of the United States and
12 the State of California. During all times relevant to the Complaint, Defendants, and each of
13 them, operate as a business establishment under the laws of the State of California because they
14 provide goods, services and/or facilities in exchange for money.

15 8. Plaintiff is informed and believes, and thereon alleges, that Defendants and each
16 of them were, at all times relevant to the action, the owner, operator, lessor, lessee, franchiser,
17 franchisee, general partner, limited partner, agent, employee, representing partner or joint
18 venturer of the remaining Defendants and were acting within the course and scope of that
19 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
20 Defendants herein, including their managing agents and owners, gave consent to, ratified and/or
21 authorized the acts alleged herein to each other.

STATEMENT OF FACTS

24 9. Plaintiff lives near the Store. On February 13, 2019, cutting it pretty thin, he went
25 to the Store to order a Valentine's Day gift for his girlfriend in celebration of their five-year
26 anniversary.

27 10. 2706-2740 Middlefield Road is a strip of stores that share subdividing walls and
28 also share an off-street parking area with five parking spaces. When Defendant arrived at the

1 strip of stores, he found that there were no designated disabled parking spaces.

2 11. Plaintiff drives an accessible van with hand controls. Getting out of his van, he
3 found there was no safe way to cross the driveway from the parking to the sidewalk in front of
4 the store. He found that the driveway itself was not level. It had slopes, cross-slopes, and areas
5 of broken and decayed asphalt which presented a danger to him in his wheelchair.

6 12. Further, he found that there was no curb cut from the driveway to get up onto the
7 raised walkway which passes in front of the stores. He had to roll in his chair down the driveway
8 to the public sidewalk, where he was finally able to get up onto the raised walkway.

9 13. When Plaintiff finally got up onto the walkway, he found that two of the other
10 businesses in the strip had their doors opened out into the walkway. Opened out, the doors
11 entirely blocked the walkway and Plaintiff could not get past. He had to back up on the narrow
12 walkway and close the doors before he could get past those stores toward his destination.

13 14. These conditions constitute deviations from the most basic disability access
14 standards as set forth in the 2004 Americans with Disabilities Act Accessibility Guidelines as
15 well as the earlier 1991 Americans with Disabilities Act Accessibility Guidelines for Buildings
16 and Facilities. These conditions also fail to conform with State building regulations set forth in
17 Title 24, Part 2, Volume 1 of the California Code of Regulations, commonly referred to as the
18 California Building Code (the “CBC”). Plaintiff is informed and believes, and upon that basis
19 alleges, that these and other elements in the Store and its attendant facilities violate the
20 regulations for accessible construction.

21 15. Plaintiff has experienced difficulty, discomfort, embarrassment, frustration and
22 other kinds of distress because of the inaccessible condition of the Store and surrounding area, all
23 to Plaintiff’s general damages in an amount according to proof.

24 16. Plaintiff’s girlfriend likes the products that Edible Arrangements sells; it was a
25 successful Valentines’ Day gift. The Middlefield Road location is conveniently located for
26 Plaintiff. It offers options that are not available to him online, such as free samples and
27 smoothies. He would like to patronize that location in the future but is deterred from doing so
28 because the location is not only inaccessible, but unsafe for him to use. Plaintiff is deterred from

1 returning there until the facilities are fully accessible to him.

2 17. Based upon a review of publicly available documents, Plaintiff is informed and
3 believes and thereupon alleges that the Store, Edible Arrangements® number 1587, first opened
4 for business in September 2016. Previously, a different business had operated from that space.
5 Before opening, the building underwent extensive alterations to accommodate the new tenant.
6 Therefore, the facilities were required to comply with construction regulations for disability
7 access, which had been in effect for approximately 30 years in California and a decade on the
8 federal level. Moreover, based upon the national brand recognition and franchise standards of
9 Edible Arrangements and upon the amount of commercial real estate owned and operated by
10 Wing Sing Chong, Plaintiff is informed and believes and thereupon alleges that Defendants, and
11 each of them, are sophisticated commercial real estate and business owners and operators. They
12 are familiar with the disability access requirements that apply to their facilities and have applied
13 for decades. Based upon the fact that Defendants must have been aware of their obligations to
14 their disabled patrons, yet built and allowed the barriers to access to remain since the facilities
15 opened, Plaintiff alleges that Defendants' behavior is intentional: They maintain discriminatory
16 facilities and policies and practices of failing to maintain accessible features, in conscious
17 disregard of the civil rights of Plaintiff and others similarly situated.

FIRST CLAIM

(For Discriminatory Practices in Public Accommodations; Violation of the Americans with Disabilities Act of 1990)

22 18. Based on the facts and allegations pled in this Complaint (which Plaintiff re-
23 pleads and incorporates herein by reference), Plaintiff was denied full and equal enjoyment of
24 and access to Defendants' goods, services, facilities, privileges, advantages or accommodations
25 in violation of the ADA. Plaintiff alleges that each Defendant owns, leases and/or operates a
26 public accommodation as defined in 42 U.S.C. section 12181(7). The condition of Defendants'
27 facilities and/or the manner in which Defendants provided goods and services failed to provide

1 full and equal access to Defendants' goods and services in public accommodations as required
 2 generally by the provisions of 42 U.S.C. sections 12182(a) and 12182(b)(1)(A). As set forth in
 3 this Complaint, Plaintiff was specifically subjected to discrimination in violation of 42 U.S.C.
 4 sections 12182(b)(2)(A)(iv); 12182(b)(2)(A)(v); 12182(b)(2)(A)(iii); 12183 and 12188 because
 5 Plaintiff was denied equal access to and enjoyment of the Store and its facilities.

6 19. Plaintiff is a person with a disability because he has a condition affecting one or
 7 more of the following body systems: Neurological, musculoskeletal and/or cardiovascular.
 8 Further, Plaintiff's physical impairments substantially limit major life activities, including
 9 standing and walking. Plaintiff cannot perform the above-noted major life activities in the
 10 manner, speed and duration when compared to the average person. Moreover, Plaintiff has a
 11 history of and/or has been diagnosed and/or classified as having a physical impairment as
 12 required by 42 U.S.C. section 12102(2)(A).

13 20. The ADA prohibits, in pertinent part: "A failure to remove architectural barriers,
 14 and communication barriers that are structural in nature, in existing facilities . . . where such
 15 removal is readily achievable." 42 U.S.C. § 12182(b)(2)(A)(iv).

16 21. Plaintiff alleges that the removal of each of the specific barriers that Plaintiff
 17 encountered as set forth above, was at all times, "readily achievable" pursuant to the factors set
 18 forth in the ADA and the applicable regulations adopted by the United States Department of
 19 Justice under the ADA (said regulations being set forth in 28 CFR Part 36). Further, assuming
 20 *arguendo* that Defendants were able to meet their burden of production and of proof that the
 21 removal of the defined architectural barriers (or any of them) was or is not "readily achievable,"
 22 Defendants have failed conspicuously to make their goods, services, facilities, privileges,
 23 advantages and/or accommodations available through alternative readily achievable methods
 24 pursuant to the requirements of 42 U.S.C. section 12182(b)(2)(A)(v). Additionally, Defendants
 25 have conspicuously failed to obey the provisions of section 28 CFR §36.211 that require public
 26 accommodations to maintain features that are required to be accessible.

27 22. Defendants have failed 42 U.S.C. section 12182(b)(2)(A)(ii) "to make reasonable
 28 modifications in policies, practices and procedures when such modifications are necessary to

1 afford such goods, services, facilities, privileges, advantages or accommodations to individuals
 2 with disabilities.” Based on the facts and allegations pled herein, Defendants failed and refused
 3 to modify their policies, practices and procedures in that they failed to have a scheme, plan or
 4 design to assist Plaintiff and/or others similarly situated in enjoying and utilizing Defendants’
 5 services, facilities, privileges, advantages or accommodations, as required by the ADA.
 6 Additionally, Defendants conspicuously failed to adopt required policies and procedures to allow
 7 people with disabilities to navigate the Store and its facilities effectively.

8 23. Based upon a public records search, Plaintiff is informed and believes and based
 9 thereon alleges that the Store (or relevant portions thereof) was designed and/or constructed for
 10 first occupancy after January 26, 1993.

11 24. In this regard, 42 U.S.C. section 12183(a)(1) states that a failure to design and
 12 construct covered public accommodation buildings and facilities that are readily accessible to
 13 and useable by people with disabilities, as required by the ADA and the regulation enacted
 14 thereunder in 28 C.F.R. Part 36, is discriminatory and violates the ADA.

15 25. Plaintiff is informed and believes and based thereon alleges that Defendants have
 16 modified and altered the Store on or after January 26, 1992, in a manner that affects the usability
 17 and accessibility of the Store.

18 26. The ADA specifically prohibits discrimination against persons with disabilities in
 19 the construction and alteration of public accommodations. In this regard, 42 U.S.C. section
 20 12183(a)(2) as enforceable at the time of the incidents described herein prohibits:

21 (2) with respect to a facility or part thereof that is altered by, on behalf of, or
 22 for the use of an establishment in a manner that affects or could affect the usability
 23 of the facility or part thereof, a failure to make alterations in such a manner that, to
 24 the maximum extent feasible, the altered portions of the facility are readily
 25 accessible to and usable by individuals with disabilities, including individuals who
 26 use wheelchairs. Where the entity is undertaking an alteration that affects or could
 27 affect usability of or access to an area of the facility containing a primary function,
 28 the entity shall also make the alterations in such a manner that, to the maximum
 extent feasible, the path of travel to the altered area and the bathrooms, telephones,
 and drinking fountains serving the altered area, are readily accessible to and usable
 by individuals with disabilities where such alterations to the path of travel or the
 bathrooms, telephones, and drinking fountains serving the altered area are not
 disproportionate to the overall alterations in terms of cost and scope (as determined
 under criteria established by the Attorney General).

1 Sections 36.402 and 36.403 of 28 C.F.R. Part 36 contain the regulations called for and referenced
 2 in 42 U.S.C. section 12183(a)(2). As enforceable at the time of the incidents alleged herein,
 3 section 36.402 of 28 C.F.R. Part 36 states, in pertinent part:

4 (a) General.

5 (1) Any alteration to a place of public accommodation or a commercial
 6 facility, after January 26, 1992, shall be made so as to ensure that, to the maximum
 7 extent feasible, the altered portions of the facility are readily accessible to and usable
 8 by individuals with disabilities, including individuals who use wheelchairs.

9 (2) An alteration is deemed to be undertaken after January 26, 1992, if the
 10 physical alteration of the property begins after that date.

11 (b) Alteration. For the purposes of this part, an alteration is a change to a place of
 12 public accommodation or a commercial facility that affects or could affect the
 13 usability of the building or facility or any part thereof.

14 (1) Alterations include, but are not limited to, remodeling, renovation,
 15 rehabilitation, reconstruction, historic restoration, changes or rearrangement in
 16 structural parts or elements, and changes or rearrangement in the plan configuration
 17 of walls and full-height partitions...

18 (2) If existing elements, spaces, or common areas are altered, then each such
 19 altered element, space, or area shall comply with the applicable provisions of
 20 appendix A to this part.

21 Section 36.403(a) of 28 C.F.R. Part 36 requires additional “path of travel” accessibility work to be
 22 conducted in connection with certain alterations. That section, as enforceable at the time of the
 23 incidents alleged herein states, in pertinent part:

24 (a) General. An alteration that affects or could affect the usability of or access to an
 25 area of a facility that contains a primary function shall be made so as to ensure that,
 26 to the maximum extent feasible, the path of travel to the altered area and the
 27 restrooms, telephones, and drinking fountains serving the altered area, are readily
 28 accessible to and usable by individuals with disabilities, including individuals who
 use wheelchairs, unless the cost and scope of such alterations is disproportionate to
 the cost of the overall alteration.

Section 36.403(e) defines a path of travel as follows:

(e) Path of Travel.

(1) A ‘path of travel’ includes a continuous, unobstructed way of
 pedestrian passage by means of which the altered area may be approached,
 entered, and exited, and which connects the altered area with an exterior approach
 (including sidewalks, streets, and parking areas), an entrance to the facility, and
 other parts of the facility.

(2) An accessible path of travel may consist of walks and sidewalks,

1 curb ramps and other interior or exterior pedestrian ramps; clear floor paths through
2 lobbies, corridors, rooms, and other improved areas; parking access aisles;
3 elevators and lifts; or a combination of these elements.

4 (3) For the purposes of this part, the term ‘path of travel’ also includes
5 the restrooms, telephones, and drinking fountains serving the altered area.

6 27. Based on the facts and allegations herein, Plaintiff has been damaged and will
7 suffer irreparable harm unless Defendants are ordered to discontinue business at the Store and its
8 facilities or: (i) remove architectural and other barriers at Defendants’ property and otherwise
9 obey the requirements of the ADA and (ii) adopt policies and procedures that comport with the
10 requirements of the ADA with respect to the enjoyment of the facilities by guests with
11 disabilities. Plaintiff alleges that Defendants’ discriminatory conduct is capable of repetition,
12 and this discriminatory repetition adversely impacts Plaintiff and a substantial segment of the
13 disability community. Plaintiff alleges there is a national public interest in requiring accessibility
14 in places of public accommodation. Plaintiff has no adequate remedy at law to redress the
15 discriminatory conduct of Defendants. Plaintiff desires to fully-utilize Defendants’ place of
16 business but is deterred from doing so because of the barriers set forth herein. Accordingly,
17 Plaintiff alleges that a prohibitory or mandatory injunction, including a paid monitor, is
18 necessary to assure that Defendants comply with the applicable requirements of the ADA.
19

20 28. Other access barriers may exist at the Store. Plaintiff will seek leave to amend
21 this Complaint after a site survey of the premises by his access consultant, pursuant to the 9th
22 Circuit’s holding in *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9th Cir. 2008).

23 **SECOND CLAIM**

24 **(For Denial of Full and Equal Access in Violation of
25 California Civil Code Sections 54 and 54.1)**

26 29. Based on the facts and allegations pled in this Complaint (which Plaintiff re-
27 pleads and incorporates herein by reference), Plaintiff alleges that Defendants have discriminated
28 against Plaintiff and violated Plaintiff’s rights under sections 54 and 54.1 of the California Civil
Code. At all times relevant to this Action, California Civil Code sections 54 and 54.1 have

1 provided that physically disabled persons are not to be discriminated against because of their
2 physical disabilities and that they shall have full and equal use of public facilities and other
3 public places.

4 30. Section 54(a) of the California Civil Code states that individuals with disabilities
5 or medical conditions have the same right as the general public to the full and free use of the
6 streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals,
7 clinics and physicians' offices, public facilities and other public places.

8 31. Plaintiff is an individual with a disability as defined in California Government
9 Code section 12926.

10 32. California Civil Code section 54.1 (a)(1) provides, in pertinent part, as follows:
11 54.1(a)(1) Individuals with disabilities shall be entitled to full and equal
12 access, as other members of the general public, to accommodations,
13 advantages, facilities, ... places of public accommodation, amusement, or
14 resort, and other places to which the general public is invited, subject only
15 to the conditions and limitations established by law, or state or federal
16 regulation, and applicable alike to all persons.

17 33. California Health & Safety Code section 19955 provides, in pertinent part:
18 The purpose of this part is to ensure that public accommodations or facilities
19 constructed in this state with private funds adhere to the provisions of
Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
Government Code. For the purposes of this part 'public accommodation or
facilities' means a building, structure, facility, complex or improved area
which is used by the general public... When sanitary facilities are made
available for the public, clients or employees in such accommodations or
facilities they shall be made available for the handicapped.

20 34. California Health & Safety Code section 19956, which is in the same Chapter as
21 section 19955, provides, in pertinent part: "All public accommodations constructed in this state
22 shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title
23 1 of the Government Code."

24 35. California Health & Safety Code section 19956 became operative on July 1, 1970
25 and is applicable to all public accommodations constructed or altered after that date.

26 36. Plaintiff is informed and believes and based thereon alleges, that the Store was
27 constructed and/or has been substantially altered or modified after July 1, 1970.

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1 37. Pursuant to the authority delegated by Government Code section 4450, *et seq.*, the
2 California State Architect promulgated regulations for the enforcement of the aforementioned
3 provisions of the Health & Safety Code and the Government Code. Since July 1, 1970, the State
4 Architect has developed and modified building regulations as set forth in the California Building
5 Code and its antecedents.

6 38. Plaintiff is informed and believes, and based thereon alleges, that construction,
7 alterations, remodeling and/or renovations have been conducted at the premises since July 1,
8 1970.

9 39. Plaintiff alleges that the construction, alterations, remodeling and/or renovations
10 were conducted in violation of the above provisions of California law and the CBC.

11 40. A violation of the above referenced sections of the Health & Safety Code and the
12 Title 24 regulations adopted thereunder constitutes a violation of the general anti-discrimination
13 provisions Civil Code sections 54 and 54.1.

14 41. Each violation of the Americans with Disabilities Act of 1990 also constitutes a
15 violation of sections 54(c) and 54.1(d) of the California Civil Code, thus independently justifying
16 an award of damages and injunctive relief pursuant to California law. Plaintiff alleges that he
17 has been denied such full and equal access as required by California law which incorporates Title
18 III of the ADA.

19 42. Section 54.3 of the California Civil Code provides that any person, firm or
20 corporation that denies or interferes with the admittance to or enjoyment of the public facilities
21 as specified in sections 54 or 54.1 thereof or who otherwise interferes with the rights of an
22 individual with a disability under sections 54 or 54.1 shall be liable for each such offense for the
23 actual damages, and up to three times actual damages, but in no case less than \$1,000, and such
24 attorneys' fees as may be determined by the Court.

25 43. These violations of Plaintiff's rights as alleged have resulted in the denial to
26 Plaintiff of full and equal access to the Store and the goods and services offered there and have
27 caused Plaintiff to suffer the damage and harms set forth and alleged in this Complaint.

28 ///

1 Plaintiff alleges that these discriminatory acts and omissions were intentional for the
2 reasons stated above.

3 **THIRD CLAIM**

4 **(For Violation of Section 51 of the California Civil Code)**

5 44. At all times relevant to this action, section 51 of the California Civil Code has
6 provided that physically disabled persons are not to be discriminated against because of their
7 physical disabilities. Based on the facts and allegations pled in this Complaint (which Plaintiff
8 re-pleads and incorporates herein by reference), Plaintiff alleges that Defendants have
9 discriminated against Plaintiff and violated Plaintiff's rights under section 51 of the California
10 Civil Code.

11 45. Plaintiff has a disability as defined by section 12926 of the California
12 Government Code.

13 46. California Civil Code section 51(b) provides, in pertinent part:

14 (b) All persons within the jurisdiction of this state are free and equal, and no matter
15 what their sex, race, color, religion, ancestry, national origin, disability, or medical
16 condition are entitled to the full and equal accommodations, advantages, facilities,
privileges, or services in all business establishments of every kind whatsoever

17 47. Section 52(a) of the California Civil Code provides as follows:

18 (a) Whoever denies, aids or incites a denial, or makes any discrimination or
distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense
19 for the actual damages, and any amount that may be determined by a jury, or a court
sitting without a jury, up to a maximum of three times the amount of actual damage
20 but in no case less than four thousand dollars (\$4,000), and any attorney's fees that
may be determined by the court in addition thereto, suffered by any person denied
the rights provided in Sections 51, 51.5, or 51.6.

22 48. Each violation of the Americans with Disabilities Act of 1990 also constitutes a
23 violation of section 51(f) of the California Civil Code, thus independently justifying an award of
24 damages and injunctive relief pursuant to California law. Plaintiff alleges that he has been
25 denied such full and equal access as required by California law which incorporates Title III of
26 the ADA.

27 49. The barriers to access complained of herein as well as the failures to adopt and
28 modify policies and procedures are patent barriers to people with mobility disabilities and are of

1 an obvious and intuitive nature and demonstrate an intent to deny Plaintiff's rights. Parties who
2 own and/or operate commercial facilities are familiar with the requirements for the provision of
3 accessible features and policies, for use by people with disabilities and are aware that such
4 matters are governed by the ADA. Defendants intentionally allowed the barriers complained of
5 herein to remain at the Store and its facilities and failed to adopt or modify policies and
6 procedures to provide access to Plaintiff and persons similarly situated. Plaintiff's damages
7 resulted from Defendants' intentional acts and omissions.

8 WHEREFORE, Plaintiff prays for damages and relief as hereinafter stated.
9

10 **PRAYER FOR RELIEF**

11 A. For injunctive relief pursuant to 42 U.S.C. section 12188 and section 52 of the
12 California Civil Code. Plaintiff requests that this Court enjoin Defendants from continuing to do
13 business at the Store prior to removing all architectural and policy barriers and otherwise
14 complying with the ADA and California laws or in the alternative, that this Court issue a
15 mandatory injunction requiring Defendants to immediately make the Store and its facilities fully
16 accessible to people with disabilities, all in compliance with the standards set forth in the
17 ADAAG, ADAS and the CBC. Plaintiff does not request any injunctive relief pursuant to section
18 55 of the California Civil Code or section 19953 of the California Health & Safety Code;

19 B. For general and special damages pursuant to California Civil Code sections 52,
20 54.3, 3281 and 3333, and/or under common law;

21 C. For a trebling of actual damages, but in no event less than \$4,000 in damages
22 pursuant to California Civil Code section 52 for each and every violation of California Civil Code
23 section 51;

24 D. In the alternative to the damages pursuant to California Civil Code section 52 in
25 Paragraph B above, for a trebling of actual damages, but in no event less than \$1,000 in damages
26 pursuant to California Civil Code section 54.3 for each and every violation of California Civil
27 Code section 54.1 and/or California Civil Code section 54;

28 E. For attorneys' fees and costs pursuant to 42 U.S.C. §12188(a), California Civil

1 Code §52; California Civil Code §54.3, California Code of Civil Procedure §1021.5; and

2 F. For such other further relief as the Court deems proper.

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5 Date: July 3, 2019

DERBY, McGUINNESS & GOLDSMITH, LLP

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/s/Celia McGuinness
By CELIA McGUINNESS, Esq.
Attorneys for Plaintiff
GERARDO HERNANDEZ

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DEMAND FOR JURY

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Plaintiff hereby demands a jury for all claims for which a jury is permitted.

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Date: July 3, 2019

DERBY, McGUINNESS & GOLDSMITH, LLP

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/s/Celia McGuinness
By CELIA McGUINNESS, Esq.
Attorneys for Plaintiff
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